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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 BREANNA C. WEBB,
12 Plaintiff,
13 v.
14 PEPPERDINE UNIVERSITY,
15 Defendant.
16

Case No. CV 24-05804-WDK (RAO)

**REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

17 This Report and Recommendation is submitted to the Honorable William D.
18 Keller, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order
19 05-07 of the United States District Court for the Central District of California.

20 **I. INTRODUCTION**

21 On July 10, 2024, Plaintiff Breanna C. Webb (“Plaintiff”), proceeding *pro se*,
22 filed a civil complaint (“Complaint”). Dkt. No. 1. Plaintiff’s request to proceed *in*
23 *forma pauperis* was granted on September 3, 2024. Dkt. No. 7. On September 26,
24 2024, the Court dismissed Plaintiff’s Complaint with leave to amend. Dkt. No. 8.
25 Plaintiff’s amended complaint was due by October 28, 2024. *Id.* When Plaintiff did
26 not file an amended complaint by the deadline, the Court issued an Order to Show
27 Cause (“OSC”) on November 15, 2024, as to why the instant action should not be
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1 dismissed for failure to prosecute. Dkt. No. 11. The deadline for Plaintiff to respond
2 to the OSC was December 13, 2024. *Id.* Plaintiff was warned that this case would
3 be subject to dismissal if she failed to respond to the OSC. *Id.* To date, Plaintiff has
4 not filed a response to the OSC or an amended complaint.

5 For the reasons set forth below, the Court recommends that Plaintiff's action
6 be dismissed without prejudice for failure to obey court orders and to prosecute
7 pursuant to Federal Rule of Civil Procedure 41(b).

8 **II. DISCUSSION**

9 Federal Rule of Civil Procedure 41 ("Rule 41") governs the dismissal of
10 federal actions. Rule 41(b) grants district courts authority to dismiss actions for
11 failure to comply with court orders or for failure to prosecute. *Ferdik v. Bonzelet*,
12 963 F.2d 1258, 1260-63 (9th Cir. 1992); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-
13 31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962). District courts may exercise their inherent
14 power to control their dockets by imposing sanctions, including, where appropriate,
15 the dismissal of a case. *Ferdik*, 963 F.2d at 1260.

16 A court must weigh five factors when determining whether to dismiss an action
17 for failure to prosecute or failure to comply with court orders:

- 18 (1) the public's interest in expeditious resolution of litigation;
- 19 (2) the court's need to manage its docket;
- 20 (3) the risk of prejudice to defendants;
- 21 (4) the availability of less drastic alternatives; and
- 22 (5) the public policy favoring disposition of cases on their merits.

23 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). Dismissal is appropriate
24 where at least four factors support dismissal, or where three factors "strongly
25 support" dismissal. *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir.
26 1990).

27 Here, the first and second factors (the public's interest in expeditious
28 resolution and the Court's need to manage its docket) strongly favor dismissal.

1 “[T]he public’s interest in expeditious resolution of litigation always favors
2 dismissal.” *Id.* Plaintiff has failed to prosecute this action by not filing an amended
3 complaint or responding to the OSC. Plaintiff’s “noncompliance has caused [this]
4 action to come to a complete halt, thereby allowing [her] to control the pace of the
5 docket rather than the Court.” *Yourish*, 191 F.3d at 990. Plaintiff’s inaction interferes
6 with the public’s interest in expeditious resolution of the litigation and the Court’s
7 need to manage its docket. Accordingly, these two factors weigh strongly in favor
8 of dismissal.

9 The third factor (the risk of prejudice to the defendant) requires a defendant to
10 establish “that plaintiff’s actions impaired defendant’s ability to proceed to trial or
11 threatened to interfere with the rightful decision of the case.” *Pagtalunan*, 291 F.3d
12 at 642. “Limited delays and the prejudice to a defendant from the pendency of a
13 lawsuit are realities of the system that have to be accepted, provided the prejudice is
14 not compounded by ‘unreasonable’ delays.” *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th
15 Cir. 1984). However, “the risk of prejudice to the defendant is related to the
16 plaintiff’s reason for defaulting in failing to timely” act. *Yourish*, 191 F.3d at 991.
17 The better the reason, the less likely it is that the third factor will favor dismissal. *See*
18 *id.* (finding that the plaintiff’s “paltry excuse for his default on the judge’s order
19 indicate[d] that there was sufficient prejudice to Defendants from the delay that [the
20 third] factor also strongly favor[ed] dismissal”). “[T]he failure to prosecute
21 diligently is sufficient by itself to justify a dismissal, even in the absence of a showing
22 of actual prejudice to the defendant from the failure.” *Anderson v. Air W., Inc.*, 542
23 F.2d 522, 524 (9th Cir. 1976); *see also In re Eisen*, 31 F.3d 1447, 1452-53 (9th Cir.
24 1994) (quoting *Anderson*). Here, the failure to file an amended complaint or to
25 respond to the OSC indicates Plaintiff’s loss of interest in the matter. The Court finds
26 that the third factor weighs in favor of dismissal.

27 The fourth factor (the availability of less drastic alternatives) also weighs in
28 favor of dismissal. The Court provided Plaintiff sufficient time to file an amended

1 complaint and to respond to the OSC. The Court cautioned Plaintiff that a failure to
2 file an amended complaint or a response to the OSC would result in dismissal, *see*
3 Dkt. No. 11, yet Plaintiff has failed to respond. Plaintiff's failure to participate in her
4 own lawsuit supports that no lesser sanction will be effective. Also, the Court is
5 recommending dismissal of this action without prejudice, a far less drastic alternative
6 than dismissal with prejudice. Accordingly, this factor favors dismissal.

7 Regarding the fifth factor, public policy generally favors the disposition of
8 cases on their merits. *Pagtalunan*, 291 F.3d at 643. However, it is the responsibility
9 of the moving party to move the case toward a timely disposition on the merits, and
10 to refrain from dilatory and evasive tactics. *Morris v. Morgan Stanley & Co.*, 942
11 F.2d 648, 652 (9th Cir. 1991). Because Plaintiff has failed to participate in her own
12 lawsuit, it does not appear that retention of this case would increase the likelihood of
13 the matter being resolved on its merits. Therefore, this factor weighs only slightly
14 against dismissal.

15 Four factors favor dismissal and one factor weighs slightly against dismissal.
16 Accordingly, dismissal of this action without prejudice is appropriate.

17 **III. RECOMMENDATION**

18 For the reasons discussed above, **IT IS RECOMMENDED** that the District
19 Court issue an Order: (1) accepting and adopting this Report and Recommendation;
20 and (2) dismissing this action without prejudice.

21
22 DATED: March 21, 2025

23 _____
24 /s/
25 ROZELLA A. OLIVER
26 UNITED STATES MAGISTRATE JUDGE
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NOTICE

Reports and Recommendations are not appealable to the Court of Appeals but may be subject to the right of any party to file objections as provided in Local Civil Rule 72 and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the Judgment of the District Court.